

WISCONSIN STATE ASSEMBLY

STATE REPRESENTATIVE
FREDERICK P. KESSLER

12TH DISTRICT

**Statement of State Representative Frederick P. Kessler
Assembly Committee on Elections and Campaign Reform
Wisconsin Capitol—Room 328 Northwest
Tuesday, November 17, 2009**

**Assembly Joint Resolution 29, Establishing Competitive Election Criteria for
Redistricting the Legislature (First Consideration)**

Thank you to the Chairman and the members of this committee for hearing AJR 29.

As everyone here is aware, the elections occurring less than a year from today will be the last conducted with the current set of districts. Some time between the 2010 and 2012 elections, someone – either the Legislature with the assent of the Governor, or, failing that, the state or federal courts – will draw a new map with new districts. This resolution would amend the state constitution to ensure that whoever draws the map, the new districts will be much more fair and competitive than they have been in recent years.

Our history shows that both legislatively-drawn and court-drawn maps tend to feature many districts dominated by one party or the other. As a result, election after election we see many legislative ‘races’ that are really foregone conclusions. In these districts, seats rarely change parties, and in many, challengers do not even run. This is not likely to change, whether this amendment passes or fails.

What this amendment seeks is a fair allocation of the “safe” seats, while assuring that enough competitive seats exist. I understand that in landslide elections, some competitive seats, as we define them, become “safe,” but over the decade, based on Wisconsin’s history, they will be competitive, particularly if no incumbent is running.

As I wrote recently in a Journal-Sentinel op-ed, as a Democrat, I can and will draw lines that favor the Democratic party – if I get the opportunity. I know there are equally skilled people on the GOP side, capable and intending to do the same for the benefit of their party. Every sitting member of the Legislature has an interest in keeping a “safe” district – and these interests are reflected in the maps the Legislature draws.

It is less obvious why court-drawn maps should also favor safe districts. Wisconsin has had a court-drawn legislative map for most of the last three decades. They tend to appear whenever there is split control in the Assembly, Senate, or Governorship, because the parties cannot come to an agreement on a map. The criteria that the courts use – contiguity, compactness, and respect for county, precinct, town and ward lines – are neutral with respect to party. However, it turns out that *ignoring* partisan affiliation does not result in a competitive map – as the many safe seats in our current Legislature attest.

This is why I do not believe that independent redistricting commissions – a frequently-proposed approach here and around the country – would really solve the problem of

competitiveness. Further, I find it difficult to believe that truly “neutral” parties can ever be found to serve on such a panel – there is simply too much at stake for everyone.

AJR 29 proposes a different solution: rather than ignoring partisan data, a redistricting authority should recognize it and use it to ensure competitiveness. The amendment mandates that the State Superintendent of Public Instruction perform the administrative function of determining an average statewide percentage of the two-party vote for governor or president in the five previous elections. Since Wisconsin is a competitive state, the result is usually close to a 50-50 split.

Whoever draws the district lines would have to provide that the majority party in the Assembly have an edge (that is, a percentage greater than that party’s statewide average) in 50 districts and the minority party have an edge in 49. Twenty of the Assembly districts would have to be within 1% of the five-election average. In the Senate, the minority party would have an edge in 17 districts, and the majority in 16 districts, with seven districts being within 1% of the five-election statewide average. No district could contain more than an 85% vote for one party or the other.

The criteria established by AJR 29, as a constitutional amendment, would be binding on the Legislature if it drew the map. Because the amendment is not contrary to any federal law on districting, it would also have to be followed by any court that might end up drawing the districts. In fact, in principal the rules in AJR 29 could be applied by an independent redistricting commission – if the constitution were ever amended to create one.

I believe that the only way to achieve competitive districts is to make them the law of our state. I urge this committee to recommend passage of AJR 29.

I will now be happy to answer any questions of the committee members.

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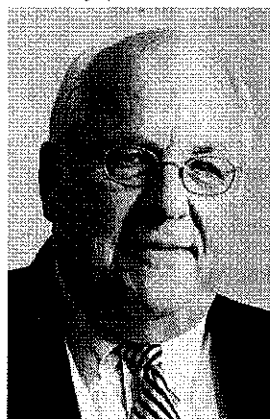
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ANOTHER VIEW

Electoral competitiveness should be goal of redistricting

Posted: Aug. 8, 2009

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I am a partisan, and I know how to draw legislative district lines to the benefit of the Democratic Party. I will do so if I have the opportunity. I also know there are equally skilled people on the GOP side, capable and intending to do the same for the benefit of their party. In either case, it can result in one party dominating the political process for a decade.

One-party domination of the redistricting process has not occurred for nearly 40 years in Wisconsin. Since then, because of split control in the Legislature or with the governor, a court has drawn state legislative districts and has not done the job very well, usually giving one party an edge.

The courts have been nonpartisan, but that has not helped to create a fair result. Some citizens have proposed that neither the courts nor the Legislature draw the lines, but that a nonpartisan commission do the redistricting. That won't work to ensure fair redistricting because neither the Legislature, the courts, nor a commission can do the job without having a result-oriented standard of fairness that is required to be followed.

I proposed and have introduced Assembly Joint Resolution 29, which would amend the Wisconsin Constitution to define and mandate competitive districting. If its terms are not followed in any redistricting plan, that plan would be overturned. The amendment mandates that the state superintendent of public instruction determine an average percentage of the two-party vote for governor or president in the five previous elections. Since Wisconsin is a competitive state, the result is usually close to a 50-50 split.

Whoever draws the district lines would have to provide that the majority party in the Assembly have an edge in 50 districts and the minority party have an edge in 49. Twenty of the Assembly districts would have to be within 1% of the five-election average. In the Senate, the minority party would have an edge in 17 districts, and the majority in 16 districts, with seven districts being within 1% of the five-election statewide average.

Some civic leaders believe that a commission could do the same without mandating result-oriented criteria. I do not believe that can occur. Where will we find the disinterested people for this commission? I find it impossible to believe that politics will not enter into their selection and their map-making. There is simply too much at stake.

More crucially, it turns out that "neutral principles" can and do result in non-competitive electoral maps. The Wisconsin Constitution in fact contains several neutral rules for districts: They must be contiguous and compact and be drawn along county, precinct, town and ward lines. These neutral rules, rather than partisan considerations, were what guided the courts that drew the maps that resulted in the current lack of competition.

That is why I am proposing a different approach. Rather than purporting to ignore partisan data, we should use it to guarantee competition. My legislation would amend the state's constitution to require that districts be drawn to reflect Wisconsin's battleground nature. The power of this plan is that it does not leave electoral competitiveness to chance or entrust it to the high-mindedness of a supposedly neutral committee.

If electoral competition is our goal, it seems to me that the best way to achieve it is to make it the law.

Rep. Frederick Kessler (D-Milwaukee) represents the 12th Assembly District.



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To The Members of the Assembly Committee of Elections and Campaign Reform:

November 17, 2009 Committee Hearing

Re: Assembly Joint Resolution 29

As I read over this proposed amendment to the Constitution of the State of Wisconsin, I ask what its purpose? What does the proposal propose to change?

The Constitution of the State of Wisconsin assigns the constitutional responsibility of reapportionment to the members of the State Legislature and has done this since 1855. Reapportionment is done every 10 years based on the US Census count of the inhabitants of Wisconsin. Reapportionment is intended to provide the people of Wisconsin with legislative districts based on the number of inhabitants in the state for the purpose of providing representational equality for all potential voters.

Equal representation has been a founding principle of our state and nation and has served its citizens well. This proposal introduces a partisan element to reapportionment that is not in keeping with the principle of equal representation. The fortunes of the CURRENT majority parties is not an appropriate consideration for equal representation. The CURRENT political parties have not always been the two majority parties in this state and may not always be the two majority parties. The voters in numerically equal apportioned legislative districts decide that each time they vote.

Further, assigning this census/reapportionment responsibility to the State Superintendent of Public Instruction is not a good idea. I looked at the numerous responsibilities already assigned to that office and they are considerable. As we read of the problems public education faces in Wisconsin, it appears that the State Superintendent has more than enough responsibilities and should focus on those central tasks related to public education.

Thank you for your attention to my comments.

Mary Ann Hanson
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Brookfield, Wisconsin 53045